
(1988) 01 KL CK 0044

In the High Court Of Kerala

Case No : T.R.C. No: 90 and 91 of 1988

M/s Safari Sales Pvt. Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 10-01-1988

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 5

Citation : (1988) 2 KLJ 457

Hon'ble Judges : K. S. Paripoornan, J;K. C. Balakrishnan, J

Bench : Division Bench

Advocate : T. Karunakaran Nambiar and K. Sankaran, for the Appellant; N.N. Divakaran Pilly, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Paripoornan, J.—In these two revisions, filed by two assesses under the Kerala Sales Tax Act, 1963 (in short, the Act), the only question raised is whether Suit cases, brief cases, etc., made out of plastic can be taxed under Entry 88 or Entry 89 of the 1st Schedule to the Act as it stood at the relevant time at 10% or whether the said spit cases, brief cases, etc., will fall only under Entry 156 of the 1st Schedule to the Act as con-vended by (be assesses taxable at 8%. We are concerned with the assessment year 1983-84. The Sales Tax Appellate Tribunal, by majority, held that the turnover relating to suit cases, brief cases; etc. made out of plastic is liable to be taxed under Entry 88 of the 1st Schedule to the Act at 10% at the point of first sale in the State by a dealer who in liable to tax u/s 5 of the Act. The said decision is challenged by the assesseees in these revisions. We heard counsel for the revision petitioners Mr. K. Sankaran, as also counsel for the Revenue Mr. N.N. Divakaran Pi Mai. In order to understand the rival contentions of the parties, it is useful to quote the

relevant entries of the Act. They are as follows:

SI. No.

Description of goods

Point of levy

Rate of tax.

0)

(2)

(3),

(4)

""Leather, leather manufacture

88.

All kinds of suit cases, brief cases and vanity bags when sold at a price of Rs.50 and above.

At the point of first sale in the State by a dealer who is Kable to tax u/s 5.

10

89.

Leather goods of all kinds, not specified in item No. 88 above (other than handmade footwear when sold at a price not exceeding Rs5.

Do

7

XX XX

XX

? -

"Miscellaneous Manufactured articles XX XXXX

156. Plastic and articles made of plastics including plastic pipes.

Do.

This revision petitioners contend that the suit cases brief cases, etc. sold by them, are essentially "plastic moulded luggage and so they will be "articles made of plastics" and can be taxed only at 8%. According to the even all kinds of suit cases, etc,, when sold at a price of Rs.50/- and above, v, come within Entry 88 of the 1st Schedule and can be taxed at 10%

2. Counsel for the assesseees (revision petitioners) contended that in determining under which of the tw) Entries the particular goods will fall, we should read all the Entries in the 1st Schedule and in a reasonable manner and in case of any doubt or ambiguity, it should be so construed with will cast a lesser burden of tax

on the assessee. It was contended that though Schedule I, Entry 88 refers to all kinds of suit cases, brief cases, etc., "plastics and articles made of plastics are particularly mentioned in" Entry 156. The General Entry, Schedule I, Entry No. 88 will be excluded in view of the particular Entry in Schedule I, Entry No. 156. Moreover, since in interpreting the relevant entries there is ambiguity, the heading under which Entry 88 and also Entry 156 are specified should be looked into to resolve the ambiguity. If this approach is adopted, it will be clear that Entry No. 88 will cover all kinds of "leather" suit cases, brief cases, etc. when sold at a price of Rs.50/- and above. In other words, Schedule I, Entry 88 is confined only to "leather goods". In contrast to the said Entry, Entry No. 156 comes under Miscellaneous Manufactured Article. The goods in the instant case being plastic suit cases, brief cases, etc., it will come only under Entry No. 156 - "plastics" and articles made of plastics". Counsel for the Revenue submitted that the words in Entry No. 88 are of very wide import and the said Entry should govern all kinds of suit cases, including plastic suit cases and plastic brief cases. According to him, the heading under which Entry No. 88 is inserted is of no consequence and should not be looked into, to interpret the plain meaning of the words contained in Entry No. 88.

3. The Sales Tax Appellate Tribunal held that plastic suit cases and briefcases will come within Entry No. 88 since the said Entry will take within its fold all kinds of suit cases and brief cases when sold at a price of Rs 50/- and above. We are of the view that the Appellate Tribunal was in error in holding so. We are satisfied that the plea taken by the revision petitioners should prevail.

4. It is settled law that in interpreting the provisions of an Act, the entire Act should be considered as a whole and interpreted reasonably and fairly.-- See *Ittoop v. Mathunni* (1983 KLT 1097 F.B) (1101-H02). How the relevant words occurring in the entries of the taxing statutes should be construed or interpreted, has been laid down in a series of decisions. One of us (Paripoornan J.) had occasion to consider the matter in *Purushotham Gokuldas & Plywood Co*, case (1983 KLT (S.N.)>page 21 (O P. A No 997/1980) and *Mysore Essential oil Industries case* 1984 KLT (SR)(OP.No.4475/1984). In the later case it has been held: -

It is true that for determining as to whether a particular item falls within a particular entry or not, or as to whether it is governed by a particular entry, the authorities have to find out on the basis of relevant facts, how it is understood in common parlance or in the commercial world or trade circle. This is the ordinary rule.. In so doing, one can refer to the dictionary. But, that will not prevail or be conclusive. This is so only if the relevant word used in the taxing statute is the one of every day use. In that case alone, it must be construed as understood in common parlance it must be given its popular sense, meaning thereby, that sense which people conversant with the subject Matter with which a statute is dealing would attribute to it. The test should not be applied as a "wooden rule" or "mechanically". The said rules subject to variation in special or particular cases

which calls for a different approach. If the Act is one passed with reference to, "particular trade, business or transaction and the words are used by which everybody conversant with that the, business or transaction knows and understands to have a particular meaning, in those cases, the words are to be construed as having that particular meaning, though it may differ from the common or ordinary meaning of the words.

5. It is common ground, that "suit cases" and "brief cases"; are made in leather, plastic, etc. But in this case, the suit cases, briefcases, etc. dealt with by the assesseees are made of a plastic". They are essentially "plastic" moulded luggages! "Plastics" and articles made of plastics" are particularly! and specifically dealt with in Betty, No. 156. But "suit cases" and "brief cases" are generally dealt with in Entry No. 88. The entry prima facie refers to all kinds of suit cases and brief cases.. A doubt or ambiguity certainly arises as to whether the "plastic suitcase" and "briefcases"-- a particular/specific species of suit cases and briefcases "sold by the revision petitioners will fall under the general entry-- Schedule I, Entry No 88 or the particular or specific entry Schedule I, Entry No. 156

6. It is true that the headings prefixed to sections or sets of sections in statutes are regarded as preambles to these sections and they cannot control the plain words of the enacting parts of statutes. But they may clarify or explain ambiguous words or limit the meaning of word. If there is any doubt or a ambiguity in interpreting the words in the sec. two, the heading certainly helps the court to resolve that doubt or ambiguity.-- *Bhinka and Others Vs. Charan Singh*, If the heading is similar to the preamble in an Act, we have to consider the extent to which resort can be made to the preamble in interpreting the enacting provisions of a statute. In *Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, the Court held that in view of the long title of the bill, the court should approach the substantive provisions of the bill in the light of the policy and purpose deducible from the terms of the aforesaid long title and preamble and so construe the clauses of the said bill as will subserve the said policy and purpose. Where the language of the Act is clear resort should not be made to the preamble. But it is settled law that when the meaning of particular words or sections of the Act are not clear or are ambiguous, preamble may be resorted to explain the term of the Statute.-- *Sec Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others*, , Though the preamble may not control or qualify precise or unambiguous language of the enactment, it is always permissible to look into it, since it is a key to open the mind of the Legislature.-- *Sec Tribhuban Parkash Nayyar Vs. The Union of India (UOI)*, . More recently in *Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others*, the Supreme Court held that the preamble can be resorted to, to resolve the "interpretational doubts" arising out of defective drafting of the statute.

7. We are of the view that preamble is a "key" or "pointer" to understand the

scope and ambit of the Act. It can be looked into, to illumine or resolve ambiguous or defective phraseology in the enacting part of the statute or to remove the doubts. It can also play its part in controlling or limiting The apparently wide and unambiguous enacted words, when doubts about the meaning of those words arise, by reference to the other provisions of the statute.

8. In this case we have to understand the precise import and scope of Entry No. 88 and Entry No. 156 of the 1st Schedule to the Act. We are of the view that there is doubt or ambiguity in the wording of Entry No. 88 of the 1st Schedule to the Act which is "general" in ambit. But the wording in Entry No. 156 of the 1st Schedule is clear and precise. In order to resolve the ambiguity or doubt which is discernible in Entry No. 88, it is legitimate to refer to the heading under which the said entry occurs. The heading is to the following effect:

Leather and leather manufacture.

Viewed in the light of the said heading, the scope and import of Entry No. 88 is clear. Though the wording in Entry No. 88 is of wide import and will prima facie take within its fold all suit cases and brief cases, etc., the said Entry applies to all kinds of leather suit cases and leather brief cases. However wide the language of Entry No. 88 may be, understood reviewed in the light of the heading, its applicability is limited, or confined to goods of leather origin only. We have in this context borne in mind the following well known principles of interpretation adopted by courts in the case of taxing statute. "If a case appears to be governed by either of two provisions, it is clearly the right of the assessee to claim that he should be taxed under that one which leaves him with a lighter burden." -- Per Krishnaswami Ayyangar J in Commissioner of income tax v. Messers Bosotto Brothers Ltd (AIR 1940 Mad. 366 at P.3.6&) (S; B.)- The said principle "applies to a case whereby clearly an income can be brought under either of two heads."-- See H.C. Kohli like Commissioner of income tax {AIR (39) 1952 Mad. 227 at p. 229} (D. B.). So we hold that Entry No. 88 will not take within its sweep plastic suit cases and plastic brief cases. In this view of the matter, we are of the view that the plastic suit cases and plastic brief cases sold by the appellants can be taxed only under Schedule I, Entry 156 of the Act at 8%.

In the light of the above, we hold that the majority, decision of the Appellate Tribunal to the contrary is erroneous in law. We set aside the decision of the Sales Tax Appellate Tribunal and allow these revisions.

There shall be no order as to costs.